

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JAMES C. MARCELLO, and)	
OLIVIA MARCELLO)	
)	
Plaintiffs,)	
)	CV-06-68-B-W
v.)	
)	
STATE OF MAINE, et al.)	
)	
Defendants.)	

ORDER ON MOTION FOR ORDER DIRECTING ISSUES TO THE JURY

On March 20, 2007, James and Olivia Marcello (Marcellos) filed a self-styled “Motion for Order Directing Issues to the Jury” (Docket # 103). The motion asks that “issues may be directed to be framed in said cause for the purpose of submitting to a jury” various “questions of fact.” *Pls.’ Mot.* at 1. It goes on to clarify that the Marcellos “object to the court to proceed and hear and determine” issues and “do not waive their demand for trial by jury.” *Id.* at 3. The motion enumerates a host of issues the Marcellos demand to be presented to a jury for fact finding against the following defendants: the state of Maine; judges of the Third District Court of Newport; lawyers of Farrell, Rosenblatt & Russell; Judge William Anderson of Waterville District Court; and Travis Gould, the Code Enforcement Officer for the town of Stetson.

The major problem with the Marcellos’s motion is that – with the exception of Travis Gould – the listed defendants are no longer parties to the litigation. The Court has granted motions dismissing the law firm of Farrell, Rosenblatt & Russell, the state of Maine, the judges of the Third District Court of Newport, and Judge William Anderson. *See Am. Order on Def. Farrell, Rosenblatt & Russell’s Mot. to Dismiss* (Docket # 55); *Order on Defs. State of Maine,*

Third District Court of Newport, and Judge William Anderson's Mot. to Dismiss (Docket # 76).

The Marcellos have no right to trial at all, much less a jury trial, against the defendants the Court has dismissed.

The sole remaining defendant is Travis Gould. On March 2, 2007, he moved for summary judgment, *see Def.'s Mot. for Summ. J. and/or Mot. to Dismiss* (Docket # 98), and on March 9, 2007, the Marcellos filed a response. *See Pls.' Obj. to Mot. to Strike and More Definite Statement* (Docket # 101). That motion is now pending. As regards Travis Gould, the Marcellos will have an unquestioned right to a jury trial if they survive Mr. Gould's motion for summary judgment. If summary judgment is granted as against Mr. Gould, the Marcellos will have no right to trial against him and, therefore, no right to a jury trial. *See Calvi v. Knox County*, 470 F.3d 422, 427 (1st Cir. 2006) ("[A] grant of summary judgment does not compromise the Seventh Amendment's jury trial right because that right exists only with respect to genuinely disputed issues of material fact."). As the resolution of the instant motion depends upon the resolution of the pending motion for summary judgment, the Marcellos' motion for trial by jury is premature.

Therefore, the Court DISMISSES without prejudice Plaintiffs' motion for an order directing issues to the jury (Docket # 103).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 21st day of March, 2007

Plaintiff

JAMES C MARCELLO

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Plaintiff

OLIVIA A MARCELLO

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V.

Defendant

MAINE, STATE OF
TERMINATED: 12/13/2006

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TRAVIS GOULD

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Defendant

**THIRD DISTRICT COURT OF
NEWPORT**
TERMINATED: 12/13/2006

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